

2003 DRAFTING REQUEST**Bill**

Received: 12/03/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Mark Pettis (608) 267-2365

By/Representing: Anne Sappenfield

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - sex offenses
Criminal Law - crimes agnst kids

Extra Copies:

Submit via email: YES

Requester's email: Rep.Pettis@legis.state.wi.us

Carbon copy (CC:) to: anne.sappenfield@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Statute of limitations for first degree sexual assault

Instructions:

Eliminate limitations period for 1st degree sexual assault and 1st degree sexual assault of a child

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 12/30/2003	kfollett 01/08/2004 kfollett 01/09/2004					S&L
/1			jfrantze 01/09/2004		sbasford 01/09/2004	mbarman 01/12/2004	

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Page 2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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Page 1

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1?	mdsida	1/1 kgf	1/1 q	1/1 rs			
		1/9		1/9			

FE Sent For:

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Other

2003 - 2004 LEGISLATURE

3818
LRB-1003/1
MGD:kjff

2003 BILL

Regen

- 1 AN ACT *to repeal* 939.74 (2d); and *to amend* 939.74 (1), 939.74 (2) (a), 939.74
2 (2) (c) and 971.23 (9) (a) of the statutes; **relating to:** time limits for prosecution
3 of certain crimes of sexual assault.

Analysis by the Legislative Reference Bureau ^{a homicide}

Under current law, the time limit for commencing a prosecution for a crime (the limitations period) is generally six years for a felony and three years for a misdemeanor, as measured from the date that the criminal act was committed. One of the exceptions to the general rule is for certain homicide offenses, which have no limitations period; thus, prosecution for ~~the offense~~ may be commenced at any time. Current law also provides that for some serious crimes against children (such as sexual assault of a child, repeated acts of sexual assault of a child, incest with a child, sexual exploitation of a child, and certain kinds of physical abuse of a child) a prosecution may be commenced any time before the victim reaches 31 years of age. In addition, under current law, the deadline for commencing a prosecution in a first-degree or second-degree sexual assault case or a sexual assault of a child case does not apply if, before the deadline, the state collects deoxyribonucleic acid (DNA) evidence that theoretically enables it to identify the perpetrator of the offense but is ~~unable~~ to do so. In those cases, if an analysis of the DNA evidence after the deadline results in a probable identification of the perpetrator, the state may begin a prosecution of that person within 12 months of the analysis.

This bill eliminates the limitations period (and all related exceptions) for prosecutions for first-degree ~~and second-degree~~ sexual assault and sexual assault

that does
not, in
reality,
enable it

ostensible

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of a child. ^{who is less than 13 years old if the limitations period has not yet expired} Thus, under the bill, a prosecution for these crimes may be commenced at any time. The bill, however, provides that if a court finds the elimination of the limitations period to be invalid then all of the act resulting from the enactment of the bill is void.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 939.74 (1) of the statutes is amended to read:

939.74 (1) Except as provided in ~~subs. sub. (2) and (2d)~~ and s. 946.88 (1), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

SECTION 2. 939.74 (2) (a) of the statutes is amended to read:

939.74 (2) (a) A prosecution under s. 940.01, 940.02 ^{(1)(a)} or 940.03, 940.225 (1) ^{(1)(a)} or ~~948.02 (1) or 948.025~~ may be commenced at any time regardless of whether the prosecution has ever been barred under this section.

SECTION 3. 939.74 (2) (c) of the statutes is amended to read:

939.74 (2) (c) A prosecution for violation of s. ~~948.02, 948.025~~ 948.03 (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, or 948.095 shall be commenced before the victim reaches the age of 31 years or be barred, ^{PLAIN} except as

^{Text} provided in sub. (2d) (c). ^{no strike}

SECTION 4. 939.74 (2d) of the statutes is repealed.

SECTION 5. 971.23 (9) (a) of the statutes is amended to read:

971.23 (9) (a) In this subsection "deoxyribonucleic acid profile" ~~has the meaning given in s. 939.74 (2d) (a)~~ means an individual's patterned chemical

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no
strike

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1 structure of genetic information identified by analyzing biological material that
2 contains the individual's deoxyribonucleic acid.

3 **SECTION 6. Nonstatutory provisions.**

4 (1) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
5 any part of section 939.74 (2) (a) of the statutes, as affected by this act, is
6 unconstitutional, the entire act is void.

7 (END)

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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MGD:.....

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SECTION ~~2~~ 939.74 (2d) [✓](b) of the statutes is amended to read:

939.74 (2d) (b) If before the time limitation under sub. (1) expired, the state collected biological material that is evidence of the identity of the person who committed a violation of s. 940.225 ~~(1)~~ [✓](2), the state identified a deoxyribonucleic acid profile from the biological material, and comparisons of that deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did not result in a probable identification of the person who is the source of the biological material, the state may commence prosecution of the person who is the source of the biological material for violation of s. 940.225 ~~(1)~~ [✓](2) within 12 months after comparison of the deoxyribonucleic acid profile relating to the violation results in a probable identification of the person.

History: 1981 c. 280; 1985 a. 275; 1987 a. 332, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237; 2001 a. 16, 109.

SECTION ~~2~~ 939.74 (2d) (c) of the statutes is amended to read:

939.74 (2d) (c) If before the time limitation under sub. (2) (c) expired, the state collected biological material that is evidence of the identity of the person who committed a violation of s. 948.02 ~~(1)~~ [✓](2) or 948.025 ~~(1)~~ [✓](b), the state identified a deoxyribonucleic acid profile from the biological material, and comparisons of that deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons did not result in a probable identification of the person who is the source of the biological material, the state may commence prosecution of the person who is the source of the biological material for violation of s. 948.02 ~~(1)~~ [✓](2) or 948.025 ~~(1)~~ [✓](b) within 12 months after comparison of the deoxyribonucleic acid profile relating to the violation results in a probable identification of the person.

History: 1981 c. 280; 1985 a. 275; 1987 a. 332, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237; 2001 a. 16, 109.

1 **SECTION ~~3~~ Initial applicability.**

2 (1) This act first applies to any offense the prosecution of which is not barred
3 on the effective date of this subsection.

Basford, Sarah

From: Pettis, Mark
Sent: Friday, January 09, 2004 1:37 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3818/1 Topic: Statute of limitations for first degree sexual assault

It has been requested by <Pettis, Mark> that the following draft be jacketed for the ASSEMBLY:

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